

ORDINANCE 2019-11-14-0951

APPROVING A CONTRACT WITH MARK43, INC. FOR A RECORDS MANAGEMENT SYSTEM FOR THE SAN ANTONIO POLICE DEPARTMENT FOR AN ESTIMATED TOTAL CONTRACT AMOUNT OF \$4,958,180.00, WHICH INCLUDES SERVICES REQUIRED TO FULLY IMPLEMENT AND INTEGRATE THE SYSTEM FOR A PLANNED INITIAL COST OF \$3,849,700.00, FUNDED THROUGH THE ITSD PROJECT BUDGET, AND ONGOING SYSTEM SUBSCRIPTION SERVICES FOR YEARS 2-5 FOR AN ESTIMATED COST OF \$277,120.00 ANNUALLY, FUNDED FROM SUBSEQUENT OPERATING BUDGETS.

* * * * *

WHEREAS, on March 15, 2019, the City released a Request for Proposals (RFP) to select a vendor that has a proven record of successfully delivering a highly configurable turnkey Records Management System (RMS), Field Based Reporting System (FBR), and Case Management System (CMS) to other large municipal law enforcement agencies similar in size and function to the San Antonio Police Department (SAPD); and

WHEREAS, responses were due May 20, 2019, and eight (8) firms submitted responses, of which one firm submitted two responses; and

WHEREAS, seven firms were deemed responsive with a total of eight solutions which were each evaluated independently; and

WHEREAS, the evaluation committee recommends awarding a contract to Mark43, Inc. for a period of three (3) years beginning on the date approved by City Council with the option for the City to renew for two (2) additional, one (1) year periods for an estimated total contract amount of \$4,958,180.00; and

WHEREAS, with approval of this contract the City will replace the current RMS with a web-based, National Incident Based Reporting System (NIBRS) compliant records management system; and

WHEREAS, the NIBRS crime reporting standard has been mandated by the Federal Bureau of Investigation (FBI) to replace the current Uniform Crime Reporting (UCR) standard by January 2021; and

WHEREAS, all expenditures will be in accordance with the applicable fiscal year's budget approved by City Council; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee, or the City's Deputy Chief Financial Officer, Chief Information Officer, and the Police Chief of the San Antonio Police Department are hereby authorized to execute a contract with Mark43, Inc. for a Records Management System for

the San Antonio Police Department. The score summary sheets and contract, in substantially final form, are attached hereto and incorporated herein for all purposes as **Exhibit I**.

SECTION 2. Payment is authorized to be encumbered and made payable to Mark43, Inc. in an amount not to exceed \$3,849,700.00. Payment is in support of the RMS Enhancement Project, using Fund 4009000, WBS element 09-00114-01 and GL account 5201140. Funding is provided by 2020 Unsold Tax Notes and General Fund, and is budgeted as part of the ITSD project budget. Additional funding is contingent upon City Council approval of subsequent budgets within the term of this contract.

Payment is limited to the amounts budgeted in the operating and/or capital budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 3. The financial allocations in this ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this ordinance.

SECTION 4. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage.

PASSED and APPROVED this 14th day of November, 2019.



M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:


for Leticia M. Vacek, City Clerk


Andrew Segovia, City Attorney

Agenda Item:	5 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15A, 15B, 16, 17, 18, 19, 20, 21, 25, 26, 27, 28, 29)
Date:	11/14/2019
Time:	09:55:45 AM
Vote Type:	Motion to Approve
Description:	Ordinance approving a contract with Mark43, Inc. for a Records Management System for San Antonio Police Department and services required to fully implement and integrate the system for a planned value of \$3,849,700.00 for implementation and initial system subscription services funded through the ITSD project budget and ongoing annual system subscription services for Years 2-5 for a planned cost of \$277,120.00 annually funded from subsequent ITSD operating budgets for a total contract amount of \$4,958,180.00. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
Jada Andrews-Sullivan	District 2		x				
Rebecca Viagran	District 3		x				x
Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5		x				
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x			x	
Clayton H. Perry	District 10		x				

LC
11/14/19
Item No. 5

Exhibit I

Exhibit I

RFP for Records Management System for SAPD 19-038 6100011125 Score Summary Initial Evaluation June 28, 2019	Maximum Points	Tritech Software Systems (Central Square) 1000 Business Center Drive Lake Mary, FL 32746	Niche Technology USA Limited 600 W Republic Road, Suite A116 Springfield, MO 65807	Mark43, Inc. 28 E. 28th Street, 12th Floor New York, NY 10016	Intergraph Corporation dba Hexagon Safety & Infrastructure 305 Intergraph Way Madison, AL 35758	Optimum Technology, Inc. - Perpetual License One Crosswoods Center, 100 E Campus View Blvd Suite 380 Columbus, OH 43235	Optimum Technology, Inc. - Annual Subscription 100 E Campus View Blvd Suite 380 Columbus, OH 43235	Tyler Technologies, Inc. 5101 Tennyson Parkway Plano, TX 75024	Case.One, Inc. 400 Spectrum Center Drive, Suite 220 Irvine, CA 92618
A - Experience, Background, Qualifications	35	29.63	30.63	24.88	20.88	15.38	15.38	17.63	6.88
B - Proposed Plan	30	23.63	23.38	24.13	20.88	15.25	15.25	12.63	7.00
T - Technical	10	8.38	6.05	7.18	5.91	2.77	2.77	3.50	2.38
A + B + T SUB-TOTAL	75	61.63	60.05	56.18	47.66	33.40	33.40	33.75	16.25
C - Price Schedule	10	3.60	2.49	2.62	4.44	10.00	9.66	2.81	4.40
D - Local Preference Program	10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
E - VOSB Preference Program	5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL SCORE	100	65.24	62.54	58.80	52.10	43.40	43.06	36.56	20.65
RANK BASED ON TOTAL SCORE		1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00

RFP for Records Management System for SAPD 19-038 6100011125 Score Summary Final Evaluation September 20, 2019	Maximum Points	Mark43, Inc. 28 E. 28th Street, 12th Floor New York, NY 10016	Niche Technology USA Limited 600 W Republic Road, Suite A116 Springfield, MO 65807	Tritech Software Systems (Central Square) 1000 Business Center Drive Lake Mary, FL 32746	Intergraph Corporation dba Hexagon Safety & Infrastructure 305 Intergraph Way Madison, AL 35758
A - Experience, Background, Qualifications	35	28.75	28.75	21.50	16.88
B - Proposed Plan	30	28.50	21.00	15.25	13.00
T - Technical	10	8.45	6.36	5.09	3.76
A + B + T SUB-TOTAL	75	65.70	56.11	41.84	33.63
C - Price Schedule	10	4.76	4.10	4.72	10.00
D - Local Preference Program	10	0.00	0.00	0.00	0.00
E - VOSB Preference Program	5	0.00	0.00	0.00	0.00
TOTAL SCORE	100	70.46	60.21	46.56	43.63
RANK BASED ON TOTAL SCORE		1.00	2.00	3.00	4.00

**CONTRACT FOR
RECORDS MANAGEMENT SYSTEM
FOR THE SAN ANTONIO POLICE DEPARTMENT**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City” or “Subscriber”) acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 20__ and **Mark43, Inc.** (“Contractor” or “Mark43”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “Contractor” is defined in the preamble of this Agreement and includes its successors.
- 1.3 “Director” shall mean the director of the City’s Finance Department, Purchasing Division, the Chief Information Officer (“CIO”), or the Police Chief of the San Antonio Police Department, or designees, as applicable to the City’s business processes.
- 1.4 “Local Government Record” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business. The term Local Government Record as used herein does not include Confidential Information of Mark43 (as defined in Exhibit A).
- 1.5 “RMS” or “System” shall mean the Records Management System.
- 1.6 “RTM” shall mean the Requirements Traceability Matrix.
- 1.7 “SAPD” shall mean the San Antonio Police Department.
- 1.8 “SOW” shall mean the Statement of Work.

II. TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement is for a three (3) year period and shall commence on November 14, 2019 and terminate on November 13, 2022.

- 2.2 City shall have the option to renew this Agreement on the same terms and conditions for two (2) additional, one (1) year periods. Renewals shall be in writing and executed by both City and Contractor without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.
- 2.3 For any renewals during the period beginning November 14, 2024 and ending October 13, 2029 (a period of five years), no increase in Recurring Fees (as set forth in Schedule A of Exhibit A) in effect for any 12 month period in any renewal term shall exceed 5% of the Recurring Fees effective during the immediately preceding 12 month period.
- 2.4 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods upon at least thirty days' prior written notice to Contractor, and any additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

III. SCOPE OF SERVICES

- 3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.
- 3.2 Contractor shall provide all Professional Services as set forth in the SOW and Contractor's Proposal in response to the RFP, each attached hereto as Exhibit "B" and Exhibit "D", respectively, and each incorporated by reference herein. Contractor understands and agrees that Exhibits "B" and "D" are a part of this Agreement, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by Contractor as completely and fully as are the obligations, conditions, tasks, products, and representations imposed by this Agreement, provided that any such obligations, conditions, tasks, products, and representations set forth in the SOW supersede those contained within the Proposal to the extent addressed in both documents.
- 3.3 The terms of this Agreement shall control where there is any conflict between the terms of the foregoing Exhibits, and the terms of this Agreement.
- 3.4 Allocation of Risk.
Proportionally Allocated Risk. For any Deliverable, Deadline, Milestone, or other Performance, Contractor and City shall assume proportional responsibility for any increased disbursements, costs or expenses incurred by City as a result of any breach, nonperformance, or partial performance of Contractor.
- 3.5 Warranty.
All Professional Services shall be performed with the Contractor's best skill and judgment, in a professional and workmanlike manner in accordance with best industry standards and practices for similar services, using Contractor personnel with the requisite skill, experience, and qualifications, and shall devote adequate resources to meet its obligations under this Agreement. The SaaS Services shall be delivered as described in this Agreement and will in all material respects conform to and perform in accordance with the specifications and requirements of this Agreement.
- 3.6 Upcoming/Identified Features/Capabilities. Any planned capabilities for RMS referenced by Contractor and relied upon for meeting RFP requirements shall be provided at no additional cost.
- 3.7 Staff Commitment and Training.
 - 3.7.1 Minimum Contract Length for Initial Key Project Personnel. Key Project Personnel identified as part of the implementation team shall be engaged for the entire System Implementation and General Warranty Period.

3.7.2 Changes in Key Project Personnel Subject to Approval. Any replacements of Key Project Personnel are subject to approval by City.

3.8 Relationship of City to Other Governmental Entities (Supplemental Cities).

- a) Regardless of the application of other governmental agencies in the pricing guarantee and bulk purchasing arrangements, City will not be considered a dealer, remarketer, agent or other representative of Contractor. City will also not be considered an agent, partner or representative of any Supplemental City making purchases hereunder, and shall not be obligated or liable for any such order.
- b) Supplemental City purchase orders shall be submitted directly to Contractor by the Supplemental City, and result in a separate contract between the Supplemental City and Contractor. City makes no representation or guarantee as to any minimum amount being purchased by any other Supplemental City, any Supplemental City's participation and use of the System, or any Supplemental City's participation in the bulk buying and pricing guarantees under this Agreement.
- c) Contractor shall authorize the City's use of Contractor's name, trademarks and Contractor-provided materials in City communications to other governmental organizations for purposes of soliciting and negotiating intergovernmental agreements, subject to any and all confidentiality obligations set forth in this Agreement including its Exhibits.

3.9 Project Continuation While Amendments Pending. Contractor shall not stop work on any Deliverable that does not have an Amendment pending, even if an Amendment is pending on a different Deliverable.

3.10 All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate. City shall notify Contractor in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed **\$4,958,180.00** as total compensation, to be paid to Contractor as follows:

4.2 **Milestones and Payments**

4.2.1 [Refer to Schedule A of Exhibit A]

4.2.2 Key Milestones. The following shall be considered Key Milestones under this Agreement:

- (a) Contract Initiation – 10% of project costs
- (b) Progress Milestones – 30% of project costs divided as follows:
 - 20% - Kick off meeting Complete
 - 20% - Discovery Sessions Complete

- 20% - Client Provisioning
 - 20% - Testing Complete
 - 20% - Training Complete
- (c) Go-Live Milestone – 20% of project costs
- (d) Final System Acceptance – 40% of project costs
- (e) Final Retainage – A 10% retainage will be withheld for each milestone. Final retainage will be paid out 60 days after final system acceptance by the City.
- 4.3 Contractor shall submit invoices annually for maintenance and support / licensing or upon completion of a milestone to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Police Department, P.O. Box 839966, San Antonio, Texas 78283-3966.
- 4.4 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City given the current Scope of Services set forth herein. The parties hereby agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in section 4.1 above. Total payments to Contractor cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing.
- 4.5 To the extent applicable, final acceptance of work products and services require written approval by City. The approving official shall be Director. For such work products and services requiring acceptance, payment will be made to Contractor following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

- 5.1 **Mark43 acknowledges and agrees that the City of San Antonio is a municipal governing body in the State of Texas. Mark43 acknowledges the requirements of the Texas Public Information Act, Government Code, Chapter 552.** In accordance with Texas law, Contractor acknowledges and agrees that all Local Government Records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.
- 5.2 Contractor acknowledges and agrees that all Local Government Records, as described herein, produced in the course of the work required by this contract will belong to and be the property of City. Contractor will turn over to City all such records. Contractor shall not, under any circumstances, release any records created during the course of performance of this contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.
- 5.3 For the avoidance of doubt, the term Local Government Records as used in this Section does not include Confidential Information of Mark43. Procedures regarding such Confidential Information are set forth in Section 5.5 of Exhibit A.
- 5.4 In accordance herewith, Contractor agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

VI. RECORDS RETENTION

- 6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at reasonable times, upon advance notice, and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, and examination of same by City and any of its authorized representatives.
- 6.2 Contractor shall retain any and all such documents for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return the documents to City at City's expense prior to or at the conclusion of the retention period. In such event, Contractor may retain a copy of the documents.
- 6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records that originated from the City. Contractor understands and agrees that City will process and handle all such requests.

VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice (the "Notice Period").

If City provides notice to Contractor of termination of the Agreement under this section, Contractor and City will work together to wind down the Services in the most efficient way possible. City will be responsible for the Services through the effective date of termination, and shall be responsible for costs incurred by Contractor resulting from mutually agreed-upon winding-down activities beyond what is already covered in this Agreement.

- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, either party may terminate this Agreement upon the occurrence of any breach of a material term of this Agreement, which shall for the avoidance of doubt include, without limitation, the following, when such breach remains uncured for thirty days after the other party's receipt of such notice:
- 7.3.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;
 - 7.3.2 Failing to perform or failing to comply with any covenant herein required;
 - 7.3.3 Contractor's unexcused failure to complete a Key Milestone; or
 - 7.3.4 Contractor's unexcused and material failure to substantially perform in accordance with the warranties in this Agreement.
- 7.4 Additional provisions regarding termination as set forth in Exhibit A attached hereto.

- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Contractor shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate as set forth in Schedule B to Exhibit A.
- 7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination.
- 7.8 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.
- 7.9 City shall pay Contractor for services provided prior to the date of termination, offset by any credits due and owing from Contractor to City pursuant to the Service Levels set forth in Schedule A of Exhibit A.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Police Department
P.O. Box 839966
San Antonio, TX 78283-3966

With a copy to:

City of San Antonio
Finance Department, Purchasing Division
P.O. Box 839966
San Antonio, TX 78283-3966

If intended for Contractor, to:

Mark43, Inc.
250 Hudson Street
3rd Floor
New York, NY 10013
Attn: David Jochim
Email: dave@mark43.com

With a copy to:

Mark43, Inc.
250 Hudson Street
3rd Floor
New York, NY 10013
Attn: General Counsel
Email: contractnotices@mark43.com

IX. RESERVED

X. INSURANCE

- 10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Police Department, which shall be clearly labeled "Records Management System for SAPD" in the Description of Operations block of

the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Police Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

- 10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 10.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services
6. Cyber Liability	\$1,000,000 per claim \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage

- 10.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services

hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insured. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

- 10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Police Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 10.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- 10.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.12 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

XI. ACKNOWLEDGEMENT REGARDING INDEMNIFICATION

MARK43 ACKNOWLEDGES AND AGREES THAT THE CITY OF SAN ANTONIO IS A MUNICIPALITY AND A POLITICAL SUBDIVISION OF THE STATE OF TEXAS AND IS SUBJECT TO AND GOVERNED BY THE COSTITUTION AND THE LAWS OF THE STATE OF TEXAS.

XII. SUBCONTRACTING

- 12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees, contractors or subcontractors of Contractor. Contractor, its employees, contractors or its subcontractors shall perform all necessary work.
- 12.2 It is City's understanding and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Agreement: **CommSys, Inc.** Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, as evidenced by written amendment, prior to the provision of any services by said subcontractor.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its

officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of “respondeat superior” shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XIV. NONDISCRIMINATION

- 14.1 As a party to this contract, Contractor understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.
- 14.2 Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City’s Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City’s Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Contractor’s certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

XV. CONFLICT OF INTEREST

- 15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

- 15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Contractor does not cause a City employee or officer to have a prohibited financial interest in the Contract. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor. Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. COMPLIANCE

Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XIX. FORCE MAJEURE

- 19.1 A "Force Majeure" event means a circumstance that: a) is not within the reasonable control of the Party affected; b) for which it would have been unreasonable for the affected Party to take precautions or to anticipate; c) cannot be prevented, avoided, removed, or mitigated by a Party despite the exercise of reasonable care; and d) materially and adversely affects the ability of the Party to perform its obligations under this Agreement, even after such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such circumstance and to mitigate the events thereof.
- 19.2 Nonperformance will not be excused for failure or delay resulting from general economic conditions or other general market effects and shall not excuse any failure to pay any amount due under this Agreement.
- 19.3 If a Party wishes to claim that a Force Majeure event has occurred, it shall, as soon as possible following the occurrence of such event but no later than ten (10) days after the event, notify the other Party of the nature and expected duration of such event and shall thereafter keep the other Party informed until such time as it is able to perform its obligations. The Parties shall use best efforts to:
- 19.3.1 overcome the effects of the Force Majeure event;
 - 19.3.2 mitigate the effect of any delay occasioned by the Force Majeure event, including by recourse to alternative mutually acceptable sources of services, equipment and materials; and
 - 19.3.3 ensure resumption of normal performance of this Agreement as soon as reasonably practicable and shall perform their obligations to the maximum extent practicable.

- 19.4 If a Force Majeure occurs, the Parties will execute an Amendment to extend the Performance Schedule for a time period that is reasonable under the circumstances.
- 19.5 Each Party shall bear its own costs associated with mitigating Force Majeure events, but a Force Majeure event will excuse any penalties associated with late delivery of a milestone or part thereof.
- 19.6 If a single Force Majeure event occurs for more than twelve (12) months, City shall have the option to terminate the Agreement or to engage with Contractor to renegotiate the scope of performance.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE & LEGAL FEES

- 21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between City and Vendor arising out of or relating to this agreement or its breach will be decided in a court of competent jurisdiction.**
- 21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXII. LEGAL AUTHORITY

The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

Exhibit A – Mark43 Software License and Services Terms

Exhibit B – Contractor’s Statement of Work (SOW)

Exhibit C – Contractor’s Best and Final Offer (BAFO)

Exhibit D – Contractor’s Proposal in response to the RFP (including the Requirements Traceability Matrix (RTM))

Exhibit E – Request for Proposals (RFP) No. 6100011125, including all its addendums, attachments, and exhibits

XXVI. PROHIBITED CONTRIBUTIONS

- 26.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a “high-profile” discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) until 30 calendar days following the contract award. Contractor understands that if the legal signatory entering the contract has made such a contribution, the City may not award the contract to that contributor or to that contributor’s business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP, if the identity of the signatory will be different from the individual submitting the response.
- 26.2 Contractor acknowledges that the City has identified this Agreement as high profile.
- 26.3 Contractor warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
 - (2) will not boycott Israel during the term of the contract.
- 27.2 This section only applies to a contract that:
- (1) is between a governmental entity and a company with 10 or more full-time employees; and
 - (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.
- 27.3 “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with

Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

- 27.4 "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.
- 27.5 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

XXIX. CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT

Clean Air Act & Federal Water Pollution Control Act - (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. Contractor agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to the federal agency providing funds for this contract and the appropriate EPA Regional Office. (2) Contractor agrees to include these requirements in each subcontract to this contract exceeding \$150,000 financed in whole or in part with federal funds.

XXX. SUSPENSION AND DEBARMENT

This contract is a covered transaction for purposes of 2 CFR Part 200. As such, the contractor is required to verify that neither the contractor, nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively.

The contractor is required to comply with 2 CFR 200, Subpart C and must include the requirement to comply with 2 CFR 200, Subpart C in any lower tier covered transaction it enters into.

Contractor certifies that:

- Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program; and
- Contractor shall provide immediate written notice to City if, at any time during the term of this contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The

bidder or proposer agrees to comply with the requirements of 2 CFR 200, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

XXXI. CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

XXXII. PROCUREMENT OF RECOVERED MATERIALS

Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XXXIII. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

MARK43, INC.

(Signature)

Printed Name: _____
Title: _____
Date: _____

(Signature)

Printed Name: _____
Title: _____
Date: _____

(Signature)

Printed Name: _____
Title: _____
Date: _____

(Signature)

Printed Name: _____
Title: _____
Date: _____

Approved as to Form:

Assistant City Attorney

EXHIBIT A

SOFTWARE LICENSE AND SERVICES TERMS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

- 1.1 **Defined Terms.** Defined terms have the meanings set forth in this Article 1 (Definitions) and elsewhere in this Agreement when capitalized, and may be read in singular, plural or an alternative tense as the context requires.
- 1.2 **"Affiliate"** means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.3 **"Applicable Law"** means, with respect to any party, any federal, state or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any international, federal, state or local court, administrative agency or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such party or any of its properties, assets or business operations.
- 1.4 **"Applications"** means the Records Management System and other applications as described in Schedule A.
- 1.5 **"Authorized User"** means an Affiliate, employee or independent contractor of Subscriber (solely to the extent such contractor is providing services to Subscriber), who has been authorized by Subscriber to use the SaaS Services.
- 1.6 **"Documentation"** means the user guides and user manuals for the SaaS Services that Mark43 provides to Subscriber.
- 1.7 **"Go Live"** means the date of cutover to each respective Mark43 Application.
- 1.8 **"Integration Control Document"** means the agreement, if applicable, governing any integrations with Third Party Applications.
- 1.9 **"Intellectual Property Rights"** means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
- 1.10 **"Professional Services"** means the evaluation, consultation, implementation, customization, configuration and other services offered by Mark43 in connection with the SaaS Services.
- 1.11 **"Regular Usage Period"** for any Application commences upon the occurrence of Go Live for that Application.
- 1.12 **"SaaS Services"** means the Applications, Software, and related software-as-a-service, hosting, maintenance and/or support services made available by Mark43 for remote access and use by Subscriber, including any Documentation thereto.
- 1.13 **"Services"** means the services provided or required to be provided by or through Mark43, including without limitation, SaaS Services and Professional Services.
- 1.14 **"Software"** means the object code version of Mark43's computer software and all Updates made available by Mark43 to Subscriber under this Agreement.
- 1.15 **"Statement of Work"** means a detailed plan of work to be agreed by the Parties in conjunction with this Agreement.

- 1.16 "Subscriber Data" means all data, information, content and other materials stored or transmitted by Subscriber and any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Third Party Application, excluding any Third Party Data and any Mark43 Data.
- 1.17 "Term" means the Initial Term and any Renewal Term.
- 1.18 "Third Party Application" means a third-party service approved by Mark43 to which Subscriber and any Authorized User facilitates Mark43's access to, and use of, the SaaS Services, via an application programming interface or other means.
- 1.19 "Third Party Components" means any components of the SaaS Service from time to time that are provided by third parties (e.g., Google Maps).
- 1.20 "Third Party Data" means any data owned by a third party that Mark43 provides to Subscriber via the SaaS Service.
- 1.21 "Third Party Provider" means third parties, including other vendors, state agencies and local agencies, that control products and/or databases with which Mark43 SaaS Services are to be interfaced.
- 1.22 "Updates" means any and all new releases, new versions, patches and other updates for the SaaS Services that Mark43 makes generally available without additional charge to its other subscribers of the SaaS Services.
- 1.23 "Vendors" means third parties with whom Mark43 contracts to provide components of the SaaS Services, and includes without limitation, Amazon Web Services (for platform hosting) and Google (for Google Maps).
- 1.24 "Website" means any Internet website through which Mark43 provides the SaaS Services under this Agreement.

2. SERVICES.

- 2.1 **SaaS Services.** Subject to the terms of this Agreement, and during the Term, Mark43 hereby grants a non-exclusive, non-transferable, non-sublicensable license to Subscriber and its Authorized Users to access and use the SaaS Services through the Website for Subscriber's internal purposes and in accordance with the terms and conditions of this Agreement. Mark43 will be responsible for hosting the Website, and Subscriber and its Authorized Users will be responsible for obtaining internet connections and other third party software, hardware and services necessary for it to access the Website through the Internet, including without limitation as set forth in Schedule C, "Technical Requirements." Subscriber will be responsible to Mark43 for compliance with the restrictions on use and other terms and conditions of this Agreement by any of its Authorized Users.
- 2.2 **Professional Services.** Mark43 offers Professional Services in connection with the SaaS Services as further described in Schedule A. To the extent any Professional Services involve the development of any customization or configuration to the SaaS Services, all Intellectual Property Rights to such customization or configuration will be solely owned by Mark43 and will be deemed to be included in the definition of SaaS Services and licensed to Subscriber on the terms set forth herein.
- 2.3 **Access to Documentation.** Mark43 will provide Subscriber via the Website or other means with access to the Documentation, as may be updated from time to time. Subscriber may print copies of, use, and permit its Authorized Users to use, the Documentation solely in connection with the use of the SaaS Services.
- 2.4 **Support Services.** Mark43 will provide a telephone-based help desk through which it will respond to inquiries about the SaaS Services from Subscriber via telephone from 7 AM to 7 PM (Eastern Time), Mondays through Fridays (excluding U.S. Federal holidays). Mark43 also provides a 24/7 email based help desk for the SaaS Services as set forth in Schedule A.
- 2.5 **Restrictions on Use.** Subscriber and its Authorized Users will not (and will not permit any third party to): (i) share Subscriber's or any Authorized User's login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services or of any files contained in or generated by the SaaS Services; (iii) copy, modify, adapt or translate the SaaS Services or the Third Party Data, or otherwise make any use, resell, distribute or sublicense the SaaS Services or the Third Party Data other than in connection with this Agreement; (iv) make the SaaS Services

available on a "service bureau" basis or allow any third parties to use the SaaS Services; (v) disclose the SaaS Services or any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive legends placed on the SaaS Services or the Third Party Data; (vii) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (viii) create or augment any mapping-related dataset including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Services; (ix) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (x) introduce into the Services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (xi) use the Services to post advertising or listings; (xii) use the Services to defame, abuse, harass, stalk, or threaten others; (xiii) permit access or use of the Services by any individual outside the United States; (xiv) hide or obscure any Authorized User's location; (xv) permit access or use of the Services, for any activities other than to enhance Subscriber's own services, where reliance solely on, or failure to use, the Services could lead to death, personal injury, or property damages. Subscriber and its Authorized Users will not access the SaaS Services if in direct competition with Mark 43, and will not allow access to the SaaS Services by any party who is in direct competition with Mark43, except with Mark43's prior written consent. Subscriber shall comply with additional restrictions on use of the Services in Additional Terms, as defined in Section 2.10 below.

- 2.6 Security Obligations.** Subscriber agrees it and its Authorized Users shall securely manage their respective password(s) for access to the SaaS Service. Subscriber agrees it shall notify Mark43 promptly in the event it becomes aware of any unauthorized access or use of the SaaS Service, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. In addition, Authorized Users may log into the SaaS Service from only one location at any given time; concurrent usage (or sign in) under a single username is prohibited. Subscriber is responsible for all activities conducted within User accounts in use of the SaaS Service. Subscriber shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Service, including all those related to data privacy and the transmission of technical or personal data. Subscriber agrees to (a) provide true, accurate, current and complete registration data for each account it creates via the SaaS Service, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.
- 2.7 Title.** As between Mark43 and Subscriber, Mark43 retains title to and ownership of the SaaS Services, including all copyrights and other Intellectual Property Rights relating thereto. Mark43's licensors retain title to and ownership of the Third Party Data and the Third Party Components, including all copyrights and other intellectual property rights relating thereto. Subscriber will have no rights with respect to the SaaS Services, the Third Party Data or the Third Party Components other than those expressly granted under this Agreement. Any suggestions for changes or improvements to Services that Subscriber provides to Mark43, whether solicited by Mark43 or not, shall be owned by Mark43 and Subscriber hereby irrevocably assigns, and shall assign, to Mark43 all right, title, and interest in and to such suggestions. Mark43 shall use its best efforts to solicit City's input and suggestions in its research and development of enhancements, features, and functions, but shall have no obligation to incorporate such suggestions into its products or Services.
- 2.8 Subscriber Data.** As between Mark43 and Subscriber, Subscriber owns and shall retain all right, title, and interest, including, without limitation, all Intellectual Property Rights, in and to the Subscriber Data. Subscriber shall have the sole responsibility for the accuracy, quality, and legality of the Subscriber Data, including obtaining all rights and consents necessary to share the Subscriber Data with Mark43 as set forth in this Agreement. Notwithstanding anything to the contrary contained herein, Subscriber hereby grants to Mark43 an irrevocable, worldwide, royalty free, non-exclusive, transferable, sublicensable license to use the Subscriber Data to: provide the SaaS Services to Subscriber and other Mark43 subscribers; analyze the Subscriber Data in anonymized and/or aggregate form in order to operate, maintain, manage, and improve the SaaS Services, create new products and services, and share and/or license this aggregate data to Affiliates, agents, business partners, and other third parties; for Mark43's internal purposes to improve the Applications, Software, and related services, and any other uses disclosed in or related to performance under the Agreement or any statement of work.
- 2.9 Third Party Applications.** If Subscriber installs or enables a Third Party Application for use with the SaaS Services, Subscriber grants (and will cause the applicable third party to grant) Mark43 permission to access Subscriber Data stored on that Third Party Application as required for the interoperation of that Third Party Application with the SaaS Services. In no event will Mark43 be responsible for any Third Party Application, or for any failure of a Third Party Application to properly

interoperate with the SaaS Services. If Mark43 receives information that a Third Party Application may violate any Applicable Laws or Third Party rights, Subscriber will, promptly upon receiving notice of the foregoing from Mark43, disable any connection between such Third Party Application and the SaaS Services to resolve the potential violation (and if Subscriber fails to promptly disable such connection, Mark43 shall have the right to do so and Subscriber shall provide reasonable coordination in connection therewith). In addition, in the event that Subscriber fails to properly obtain the grant of rights to Mark43 to access and use Third-Party Data as required for the interoperation of that Third-Party Application, Subscriber shall, to the extent permitted by the Constitution and laws of the State of Texas, defend, indemnify, and hold harmless Mark43 from any and all claims based on Mark43's use of such Third-Party Application.

2.10 Third Party Components.

- (a) **Use of Third-Party Components.** Mark43 may use Vendors to subcontract the performance of its duties and obligations hereunder and to provide certain functions of the Services, including without limitation, hosting and data analysis. Certain Vendor policies and terms and conditions of service shall apply to the Services. Such terms, or URL locator addresses for such terms, will be provided on **Schedule D** or in writing from time to time, ("**Additional Terms**"). If any of the Vendors and/or licensors of the Third-Party Components require Mark43 to flow down any Additional Terms to Subscriber, Subscriber's use of such Third-Party Components, as incorporated into the SaaS Service, shall be subject to such Additional Terms. In the event of any inconsistency or conflict between the Additional Terms and the terms of this Agreement, such Additional Terms shall govern with respect to Subscriber's use of the applicable Third Party Component.
- (b) **DISCLAIMER REGARDING THIRD PARTY COMPONENTS.** MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD PARTY COMPONENTS, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD PARTY COMPONENTS AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

2.11 **Third Party Data.** Subscriber shall access and use the Third Party Data in accordance with the terms and conditions of the agreement between the Subscriber and the provider of such Third Party Data. MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD PARTY DATA, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD PARTY DATA AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

2.12 **Agreements with Third Party Providers.** Subscriber, and not Mark43, is solely responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers in connection with the interfaces, and for paying all fees, costs and expenses of Third Party Providers.

2.13 **Changes to Services.** Mark43 may make changes and Updates to its Services, provided that it does not materially derogate the overall quality of the Services. Mark43 does not guarantee that the Services are or will remain compatible with any particular third party software or equipment, and may, upon written notice adequate to minimize interruption to the Services, terminate its support for, any software or equipment of Subscriber that Mark43 determines are incompatible with the operation of the Services.

3. FEES AND PAYMENT TERMS.

3.1 **Fees for Mark43 Services.** Subscriber will pay Mark43 fees as stated on **Schedule A** (the "**Fees**") attached hereto in accordance with the payment schedule set forth on **Schedule A**. All payments of Fees are non-refundable. All amounts stated in this Agreement or on any invoice are in U.S. dollars, and all payments will be made in U.S. dollars. Unless prohibited by local law, overdue payments will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum allowable interest under Applicable Law, from due date until paid. Subscriber will pay any sales, use or other tax related to the license and services provided hereunder, exclusive of income taxes and payroll taxes relating to Mark43's employees. Subscriber agrees that its use of and payment for Services constitutes its inspection and acceptance of such Service.

3.2 **Third-Party Data and Third-Party Components.** Additional fees may apply to the use of certain Third-Party Data and Third-Party Components, which if provided by Mark43, such fee is included within the Fees for the Initial Term and the first two Renewal Terms. Mark43 may pass through any increase in such fees for Third Party Components or Third Party Data, relating to any existing

Services and any increase in the scope thereof, by giving Subscriber thirty (30) days' advance notice, provided that the foregoing shall not apply to fees for Hosting Providers.

- 3.3 Taxes.** Subscriber will pay all taxes, including sales, use, excise, and other governmental fees, duties, and charges (and any penalties, interest, and other additions thereto) that are imposed on Subscriber or Mark43 with respect to the transactions and payments under this Agreement (excluding taxes based on Mark43's income or employment) ("**Indirect Taxes**"). All Fees are exclusive of Indirect Taxes. If any such taxes are required to be withheld on any payment, Subscriber will pay such additional amounts as are necessary so that the net amount received by Mark43 is equal to the amount then due and payable under this Agreement. This Section 3.3 shall not apply in the event Subscriber has tax exempt status and provides evidence of such tax exempt status to Mark43.

4. TERM AND TERMINATION.

4.1 Reserved.

4.2 Temporary Suspension and Termination.

- (a) Either party may terminate this Agreement upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.
- (b) If Mark43 reasonably determines that Subscriber's use of the Services either: (i) fails to comply with the Restrictions on Use in Section 2.5; (ii) poses a security risk to the Services or any third party, (iii) creates or is likely to create an adverse impact on Mark43's systems, the Services, or the systems or content of any other subscriber; or (iv) subjects Mark43 or its Affiliates to possible liability, then Mark43 may immediately upon notice temporarily suspend Subscriber's and any Authorized User's right to access any portion or all of the Services, pending remedial action by Subscriber, or after a period of 30 days, terminate the Services. The parties shall use reasonable efforts to take, or cause to be taken, reasonable actions to avoid any such temporary suspensions and terminations.

4.3 Effect of Termination. In the event of any termination or expiration of this Agreement,

- (a) Subscriber will pay Mark43 all amounts payable hereunder as of the termination or expiration date;
- (b) all rights and licenses granted hereunder to Subscriber (as well as all rights granted to any Authorized Users of Subscriber) will immediately cease, including but not limited to all use of the SaaS Services; and
- (c) Mark43 will provide records to Subscriber in accordance with its transition assistance services ("**Transition Assistance**") as set forth in Schedule B.
- (d) Subscriber will, upon written request of Mark43, either return to Mark43 or provide Mark43 with written certification of the destruction of, all documents, computer files and other materials containing any Confidential Information of Mark43 that are in Subscriber's possession or control.

4.4 Survival. The following provisions will survive any termination or expiration of this Agreement: Section 2.7 ("Subscriber Data"), Section 2.9 ("Third Party Components"), Section 2.10 ("Third Party Data"), Section 4.3 ("Effect of Termination"), Section 5 ("Confidentiality"), Section 6.2 ("Disclaimer"), Section 7 ("Limitation of Liability"), Section 8 ("Indemnification"), Section 9 ("Miscellaneous Provisions"), Schedule B ("Transition Assistance") and this Section 4.4 ("Survival").

5. CONFIDENTIALITY.

- 5.1 Definition of Confidential Information.** For the purposes of this Agreement, "**Confidential Information**" means: (a) with respect to Mark43, the SaaS Services, and any and all source code relating thereto, as well as Documentation and non-public information or material regarding Mark43's legal or business affairs, financing, customers, properties or data, and (b) with respect to Subscriber, any non-public information or material regarding Subscriber's legal or business affairs, financing, customers, properties or data. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the party to which the Confidential Information is disclosed (the "**Receiving Party**"); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the "**Disclosing Party**"); (iii) is independently developed by the Receiving Party

without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the disclosing party.

- 5.2 Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the Effective Date: (i) use such Confidential Information only in connection with the Receiving Party's performance of this Agreement; (ii) subject to Section 5.4 below, restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party's performance of this Agreement and (iii) except as provided herein, not disclose such Confidential Information to any third party, unless authorized in writing by the Disclosing Party to do so.
- 5.3 Protection of Confidential Information.** The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care).
- 5.4 Employee and Independent Contractor Compliance.** The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations hereunder with respect to such Confidential Information.
- 5.5 Required Disclosures.** If a party is requested to disclose any of the other party's Confidential Information pursuant to any judicial or governmental order, that party will not disclose the Confidential Information without first giving the other party written notice of the request and sufficient opportunity to contest the order, to the extent such notice and opportunity to contest may be lawfully given. If one party is nonetheless legally compelled to disclose Confidential Information, such party may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which such counsel advises it is legally required to be disclosed, provided that such party shall use its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the other party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information by such tribunal. Without limiting the foregoing, Subscriber shall notify Mark43 of any requests for records relating to Mark43 (including, without limitation, user guides or Documentation, or documents submitted by Mark43 in response to any RFP) as required by the Texas Public Information Act, which is currently within ten (10) business days of receipt of the request. Without limiting the foregoing, and to the extent permitted by the Constitution and laws of the State of Texas, Subscriber further agrees to indemnify and hold harmless Mark43, its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from all claims, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and expert and consulting fees), incurred or expended by Mark43 in connection with a request for the disclosure of Confidential Information of Mark43 or Subscriber Data.
- 5.6 Information Collected Through SaaS Services.** Subscriber is solely responsible for compliance with applicable laws related to the manner in which Subscriber chooses to use the Services, including Subscriber's transfer and processing of Subscriber Data. Subscriber understands and agrees that when it uses certain features of the SaaS Services, certain information and data may be collected from Authorized Users, including monitoring and recording activity, and tracking physical location, which may include personal identifying information. Subscriber agrees that Mark43 may use such information to (i) provide more effective Services, (ii) to develop and test its Services, (iii) to aggregate such information and combine it with that of other Users, and (iv) to use anonymous aggregate data to improve the Services or for marketing, research or other business purposes. Provision of Services may involve the disclosure of such information to Vendors or Affiliates on the condition that they agree to treat such information in a manner substantially in accordance with this Agreement. Subscriber may revoke its consent to Mark43's collecting and using such data at any time by written notice to Mark43; provided, however, that Subscriber agrees that such revocation of consent may impair or render impossible the Subscriber's use of the SaaS Services.
- 5.7 CJIS Standards; Employee Background Checks.**
- (a) Subscriber understands and agrees that Mark43 utilizes third party vendors ("Hosting Providers") to host the SaaS Services. As of the Effective Date of this Agreement, Mark43

utilizes Amazon Web Services (AWS) as its Hosting Provider for the SaaS Services. Subscriber may request reasonable records from Mark43 from time to time to assess Mark43's adherence to requirements of the applicable CJIS Security Policy promulgated by the FBI. For the avoidance of doubt, Subscriber may need the consent of Hosting Provider to obtain any records or information from Hosting Provider.

- (b) Subscriber, or if Subscriber is located in the State of California, Mark43's CLETS host agency, will have the opportunity to run background checks on Mark43 employees that will have direct access to Subscriber Data in the production environment (such employees, the "Covered Employees"), provided that Mark43 may assume that a Covered Employee has been cleared by Subscriber if Mark43 does not receive an adverse response from Subscriber within two (2) weeks of a submission of a background check request.

6. REPRESENTATIONS AND WARRANTIES.

- 6.1 **Power and Authority.** Each party represents and warrants that it has the full right, power and authority to enter into this Agreement and to discharge its obligations hereunder and that the person signing this Agreement on behalf of the party has the authority to bind that party. Subscriber represents and warrants that it has obtained, and shall have, all necessary approvals, consents, and authorizations necessary for procurement under this Agreement and that its obligations under this Agreement do not, and shall not, exceed any budget authority limitations, during the Term of this Agreement.
- 6.2 **No Other Warranties.** Use of the SaaS Services is not intended to be a substitute for the professional judgment of dispatchers, law enforcement officers, or first responders. The SaaS Services do not provide legal advice. Subscriber shall be responsible for all its own actions or failure to act in connection with the SaaS Services. Mark43 cannot guarantee that every error in the SaaS Services or problem raised by Subscriber will be resolved. THE SERVICES, THE THIRD PARTY COMPONENTS, AND THE THIRD PARTY DATA ARE PROVIDED "AS IS." MARK43 ASSUMES NO RESPONSIBILITY OR RISK FOR SUBSCRIBER'S USE OR MISUSE OF, OR FAILURE TO USE, THE INFORMATION PROVIDED THROUGH THE SAAS SERVICES. MARK43 MAKES NO WARRANTY THAT THE SERVICES WILL BE COMPLIANT WITH ANY REQUIREMENTS OF CJIS (CRIMINAL JUSTICE INFORMATION SERVICES) OR CLETS (CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM) OR ANY EQUIVALENT. DUE TO THE NATURE OF SOFTWARE AND THE INTERNET, MARK43 CANNOT GUARANTEE THAT EVERY ERROR IN THE SAAS SERVICES OR PROBLEM RAISED BY SUBSCRIBER WILL BE RESOLVED. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6 NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SERVICES, THE THIRD PARTY COMPONENTS, THE THIRD PARTY DATA OR THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION OR THAT THE SERVICES, THIRD-PARTY COMPONENTS AND THIRD-PARTY DATA ARE UP TO DATE, ACCURATE OR COMPLETE, SECURE FROM LOSS OR DAMAGE, OR FREE OF HARMFUL COMPONENTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. To the extent that a party may not as a matter of Applicable Law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

7. LIMITATION OF LIABILITY.

- 7.1 **Liability Exclusion.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OR USE, OR FAILURE OF, OF THE SERVICES, THE THIRD PARTY COMPONENTS OR THE THIRD PARTY DATA PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY, ENVIRONMENTAL DAMAGE, LOSS OF PROFITS, REVENUES, ANTICIPATED SAVINGS, CUSTOMERS, OPPORTUNITIES, DAMAGE TO PRIVACY, REPUTATION OR GOODWILL OR UNAVAILABILITY OF THE SERVICES, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- 7.2 **Limitation of Damages.** MARK43'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE

CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID AND PAYABLE TO MARK43 BY SUBSCRIBER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES. MARK43 SHALL HAVE NO LIABILITY ARISING OUT OF OR RELATING TO THE THIRD-PARTY COMPONENTS OR THE THIRD-PARTY DATA.

- 7.3 Exceptions.** NOTWITHSTANDING THE FOREGOING, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 7.1 AND SECTION 7.2 SHALL NOT APPLY TO DAMAGES ARISING FROM EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8. INDEMNIFICATION.

- 8.1 Indemnification by Mark43.** Mark43 will defend, indemnify and hold harmless Subscriber and its Authorized Users, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with any third party claim arising after the Effective Date that the use of the SaaS Services (excluding any open source software) in accordance with this Agreement infringes or misappropriates the United States intellectual property rights of third party; provided, however, that the foregoing obligations shall be subject to Subscriber (a) promptly notifying Mark43 of the claim, (b) providing Mark43 with reasonable cooperation in the defense of the claim when Subscriber becomes aware and (c) providing Mark43 with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Mark43 shall not enter into any such settlement without Subscriber's prior written consent, which consent will not be unreasonably withheld, and that Subscriber shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing. Notwithstanding the foregoing, Mark43 shall have no obligation with respect to a third party claim to the extent the third party claim arises from: (s) claims arising out of acts or omissions of Subscriber or its users, employees or contractors; (t) claims brought by Subscriber or its Affiliates or Authorized Users; (u) claims arising from the use of old versions software after receipt of modified or updated versions of software; (v) claims arising from the use of Third Party Applications, Third Party Components or Third Party Data; (w) claims arising from any data, product specifications, information or materials provided by Subscriber hereunder, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service proposed by or provided by Subscriber under a Statement of Work; (x) use of the SaaS Services in combination with modules, apparatus, hardware, software, or services not authorized by Mark43 or specified in the Documentation for use with the SaaS Services; (y) use of the SaaS Services in a manner that is not in accordance with this Agreement or the Documentation; (z) the alteration or modification of the SaaS Services by a party other than Mark43, unless such alterations and modifications were authorized by Mark43 or specified in the Documentation for use with the SaaS Services.

- 8.2 Indemnification by Subscriber.** Except where prohibited by law, Subscriber will defend, indemnify and hold harmless Mark43 and its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with (I) any third party claim arising from or relating to (i) any allegation that any data, product specifications, information or materials provided by Subscriber hereunder, including, without limitation, the Subscriber Data and Third Party Applications, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service proposed by or provided by Subscriber under a Statement of Work: (a) infringes or misappropriates any Intellectual Property Rights of a third party, or (b) violates any Applicable Laws; (ii) the actual or alleged violation of Applicable Law by Subscriber, any Authorized User, or any Affiliate, employee, agent or independent contractor of Subscriber; or (iii) Subscriber's breach of this Agreement; provided, however, that the foregoing obligations shall be subject to Mark43 (x) promptly notifying Subscriber of the claim, (y) providing Subscriber with reasonable cooperation in the defense of the claim and (z) providing Subscriber with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Subscriber shall not enter into any such settlement without Mark43's prior written consent, which consent will not be unreasonably withheld, and that Mark43 shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing; (II) disabling a connection to a Third Party Application at Subscriber's request; (III) Subscriber's actions or failure to act, resulting in any third-party claim for personal injury or death, damage to personal property or reputation, environmental damage, interference with contract or employment, or violation of privacy; (IV) any request pursuant to a judicial or governmental order or

other similar process, including but not limited to a subpoena or FOIA request or discovery request, seeking the disclosure of any Subscriber Data or other information collected or maintained by Mark43 in connection with the SaaS Services. For the avoidance of doubt, and without limiting the foregoing, Subscriber hereby acknowledges that Mark43 shall have no implicit or explicit obligation to challenge, oppose or defend against any request described in Clause (IV) of this subsection unless and until Subscriber reaffirms that it will honor its indemnification obligations as provided herein.

9. MISCELLANEOUS.

- 9.1 Reserved.**
- 9.2 Assignment.** Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other party; provided, however, that a party may, without the consent of the other party, assign or otherwise transfer this Agreement to any of its Affiliates or to an entity with or into which it is merged or consolidated or to which it sells its stock or other equity interests or all or substantially all of its assets. Any assignment or other transfer in violation of this section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
- 9.3 Reserved.**
- 9.4 Reserved.**
- 9.5 No Waiver.** The failure of either party to enforce at any time for any period any provision hereof will not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each such provision, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged.
- 9.6 Amendment.** No modification, change or amendment to this Agreement shall be effective unless in writing signed by Subscriber and Mark43. No term included in any invoice, estimate, confirmation, acceptance, purchase order or any other similar document in connection with this Agreement will be effective unless expressly stated otherwise in a separate writing signed by Subscriber and Mark43.
- 9.7 Relationship of the Parties.** The relationship of the parties established by this Agreement is that of independent contractors and nothing contained herein will be construed to (a) give any party any right or authority to create or assume any obligation of any kind on behalf of any other party or (b) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.
- 9.8 Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, to the extent the economic benefits conferred thereby to the parties remain substantially unimpaired, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions or affecting the validity or enforceability of any of such terms or provisions in any other jurisdiction.
- 9.9 Headings.** The titles and headings contained in this Agreement are for reference purposes only and shall not in any manner limit the construction or interpretation of this Agreement.
- 9.10 Counterparts.** This Agreement may be executed, including by electronic signature, in two or more counterparts, each of which shall be an original and all such counterparts together shall constitute one and the same instrument. Electronically executed or electronically transmitted (including via facsimile transmission) signatures have the full force and effect of original signatures.
- 9.11 Cumulative Remedies.** All remedies for breach of this Agreement are cumulative, and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 9.12 Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.

9.13 Compliance with Laws. Each party shall comply with all Applicable Laws relating or pertaining to the use of the Services. Subscriber shall ensure that its use of all Subscriber Data complies with all Applicable Laws relating to the privacy of third parties or the protection of their personal data promulgated by any governmental, municipal, or legal authority having jurisdiction over Subscriber or the End User Data covered by this Agreement. "**Applicable Laws**" means all applicable provisions of all (x) constitutions, treaties, statutes, laws (including the common law), rules, directives, regulations, ordinances, codes or orders of any governmental authority and (y) orders, decisions, injunctions, judgments, awards and decrees and consents of or agreements with any such entity. Each party shall comply with local anti-bribery laws as well as the U.S. Foreign Corrupt Practices Act, as well as any other applicable laws and regulations. In connection with its performance under the Agreement, neither party shall directly or indirectly: (A) offer, pay, promise to pay, or authorize the payment of any money, gift or other thing of value to any person who is an official, agent, employee, or representative of any government or instrumentality thereof or to any candidate for political or political party office, or to any other person while knowing or having reason to believe that all or any portion of such money, gift or thing of value will be offered, given, or promised, directly or indirectly, to any such official, agent, employee, or representative of any government or political party, political party official or candidate; (B) offer, promise or give any person working for, or engaged by, the other party a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; or (C) request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement. Each party represents and warrants that it shall be responsible for compliance with this provision by all third parties engaged by it to perform services related to this Agreement and shall require that such third parties agree to comply with all legal requirements required of such party under this Agreement.

9.14 Certain Waivers Unenforceable. Mark43 acknowledges that Subscriber may ask Mark43 employees or contractors, to sign a document that waives liability for property damage, injury, or death that occurs on Subscriber's real property or property (such as vehicles) that is owned or controlled by Subscriber, or in the course of performing a ride-along or comparable activity with Subscriber's personnel. Subscriber agrees that any waiver signed by a Mark43 employee or contractor is null, void, and unenforceable against Mark43 and its employees and contractors, if no such ride-alongs or comparable activities are required for successful performance of the Services.

9.15 Reserved.

9.16 Supporting Documents.

The following documents are, by this reference, expressly incorporated into this Agreement and are collectively referred to herein as the "Supporting Documents:"

- Schedule A: Services Schedule
- Schedule B: Transition Assistance
- Schedule C: Technical Requirements
- Schedule D: Additional Terms
- Schedule E: Data Processing Addendum

This Agreement and the Supporting Documents shall be construed to be mutually complimentary and supplementary whenever possible. In the event of a conflict that cannot be resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the Supporting Documents.

SCHEDULE A
Services Schedule

1. **Services**. The Services covered by this Agreement consists of the following:

a. **Professional Services:** Professional Services are detailed in the Statement of Work.

b. **SaaS Services:**

i. The Applications to be provided are described as follows:

A. ANALYTICS (ANA) SKUs

ANA 2: ANALYTICS BI SUITE EXPLORER

Customers can access Mark43's Analytics BI Suite by purchasing Viewer (ANA 1) or Explorer (ANA 2) accounts. Mark43's Analytics BI Suite includes the following capabilities:

- Interactive dashboards that update visualizations based on filters and legends.
- Drill into data points on visualizations for additional details and analysis.
- Mark43 RMS clients will be able to link from the interactive dashboards directly to Mark43 RMS reports and cases.
- Segment (Pivot) and Filter by any available data explorer field to narrow down queries.
- Visualize lat/long coordinates with pin and heat mapping functionality.
- Visualize data with tables, column graphs, bar graphs, scatter plots, line graph, area graph, pie chart, single value, funnel, timeline and donut graphics.
- Save dashboards for future access.
- Share dashboards with other Analytics Viewer and Explorer users at the department.
- Export data into a variety of formats (Text, Excel, CSV, JSON, HTML, Markdown and PNG).
- Data from RMS/CAD modules is available in near-real-time
- Analytics Explorer licenses provide licensees the ability to perform all the actions of a Analytics View user plus the ability to create, modify and delete business intelligence dashboards. Analytics Explorer users can share their business intelligence dashboards with all of the Analytics Viewer and Analytics Explorer users of Subscriber. Analytics Explorer users can explore the data from any Data Explorer based Dashboard. The number of user licenses for Analytics Explorer Users will be specified below.

ANA 2 SPECIFICATIONS/FEATURES:

- Analytics Explorer users can perform all the actions of an Analytics View user plus the ability to create, modify and delete business intelligence dashboards.
- Analytics Explorer users can share their business intelligence dashboards with all of the Analytics Viewer and Analytics Explorer users of Subscriber.
- Analytics Explorer users can explore the data from any Data Explorer based Dashboard.

Subscriber understands and agrees that third party service providers may impose additional license, warranty and other terms on Subscriber. Subscriber agrees to enter into additional agreements as reasonably required by such third parties and Mark43, including, without limitation, a different warranty/SLA addressing uptime and maintenance.

B. COMPUTER AIDED DISPATCH (CAD) SKUs

N/A

C. DATA EXCHANGE (DEX) SKUs

DEX 2: RMS DATA EXCHANGE

Mark43 RMS Data Exchange provides the capability to enter data from the RMS into State and Federal databases through a message switch. Includes subcontractor message switch software licenses as part of the cost. Any further connections to more data sources not covered by

subcontractors may incur interface costs. Functionality of this module requires RMS 1: RMS Core, RMS 4: RMS Warrants Module, and PAR 3: Message Switch Integration.

DEX 2 PRODUCT SPECIFICATIONS/FEATURES:

- Enter and cancel warrants into external databases (State-run databases or NCIC)

If agreed by the Parties, Mark43 or a partner/subcontractor will connect the Mark43 Public Safety Platform to Federal, state and local criminal justice data sources. Mark43 utilizes a third party middleware component in the Mark43 Public Safety Platform and uses a third party to perform services to setup and maintain these connections and provides support during training, configuration and implementation phases of the project. The Parties agree to evaluate the requirements together and agree on a time frame for completion. Subscriber is responsible for determining which of these downstream data feeds will continue to receive information at cutover. Subscriber, with the consent of Mark43, is also responsible for determining the policies and procedures surrounding interfaces between Mark43 Applications and third-party databases. Subscriber understands and agrees that third party service providers and Mark43 may impose additional license, warranty and other terms on Subscriber. Subscriber agrees to enter into additional agreements as reasonably required by such third parties and Mark43, including, without limitation, a different warranty/SLA addressing uptime and maintenance of the Data Exchange Services.

D. DATA LAKE (DLK) SKUs

DLK 2: DATA LAKE - ENTRY

Provision and support for Data Lake at 31 GB of RAM, 4x CPUs, 500 GB of storage, 2 TB/Month transfer limit.

DLK 2 PRODUCT SPECIFICATIONS/FEATURES:

- Dedicated Data Lake server
- Includes 5 user accounts
- 31 GB of RAM, 4x CPUs, 500 GB of storage, 2 TB/Month transfer limit

Subscriber understands and agrees that third party service providers may impose additional license, warranty and other terms on Subscriber. Subscriber agrees to enter into additional agreements as reasonably required by such third parties and Mark43, including, without limitation, a different warranty/SLA addressing uptime and maintenance.

E. RECORDS MANAGEMENT SYSTEM (RMS) SKUs

RMS 1: RMS CORE

Mark43 Core Platform supports advanced functionality around report writing; data sharing; locations, persons, and entity management; and field-based reporting. RMS Core includes Mark43 Records Compliance functionality, which enables records personnel to efficiently generate compliance-related information required by governing LE authorities. The Records Compliance module seamlessly generates the Federal NIBRS and SRS validations for officers, enabling workflows that ensure low error rates for submission, keep track of submissions, and generate the submission file from the data within the RMS).

RMS 1 PRODUCT SPECIFICATIONS/FEATURES:

- Arrest Reporting
- Case Management
- Case Supplemental Reporting
- Configurable Fields, Codes, and Validation Rules
- Field-Based Reporting
- Field Interviews / Racial profiling reporting
- File Attachments and Multimedia
- Gang Tracking
- Incident Reporting
- Location Verification / Resolution

- Master Entities / Name Index (Locations, Persons, Property, Organizations, and Vehicles)
- Missing Persons Reporting
- Multi-Agency Data Sharing
- Notifications and Agency-wide BOLO/Alerts
- PDF and CSV Exports
- Quick Search / Advanced Search
- Records Privacy (Sealing, Purging, and Expunging)
- Shapefile Management
- System Auditing
- Use of Force Reporting
- Tow / Impound Vehicle Reporting
- User Management
- Compliance code mapping for automated data capture
- View and create queue of reports needing records review
- Data validation during report submission to ensure compliant reporting
- Configurable fields and validation rules
- Ability for administrators to override automated SRS or NIBRS coding
- Automatically generate monthly SRS and NIBRS submissions
- NIBRS workspace features:
 - View history of previous NIBRS submissions and re-download previous submissions
- Submission summary statistics to understand number of reports, number of reports with errors, and current error rates
- Interactive dashboard allowing users to directly access reports that contain submission errors and require updates
- Customized error message for improved usability and step-by-step instructions for resolving errors

RMS 2: RMS CASE MANAGEMENT MODULE

The Mark43 Case Management module that enables detectives to seamlessly use the RMS to manage their cases. Incidents that require further investigation or follow-up may be referred to an investigator before they are closed or submitted to the prosecutor for a charging decision. Depending on the department's size and policies, the assignment may be made to a patrol officer, generally the officer who responded to the original incident, or the department's investigative unit. Functionality of this module requires RMS 1: RMS Core.

RMS 2 PRODUCT SPECIFICATIONS/FEATURES:

- View and create case assignment and routing queues
- Assign lead investigator, supervisors, and assigned unit
- Configurable case due dates and reminders
- Create and assign tasks and set due dates
- Create case notes for internal activity tracking
- View and download case associated files and multimedia
- Export case information to PDF
- Search and sort cases by a number of criteria, including date, assignee, investigative unit, status, and more
- Configurable case type templates
- Configurable role-based Case Management permissions and abilities
- Robust audit logs and activity tracking
- View case history from initial assignment through final disposition
- Separate statuses for compliance reporting (UCR/NIBRS) and internal case status tracking
- Seamless integration between Case Management and RMS reporting and master entity profiles modules
- Availability of Case Management data in Analytics BI Suite for robust reporting capabilities
- Case review and approval workflows
- Automated triggered notifications and alerts
- Link related cases to one another

RMS 4: RMS WARRANTS MODULE

RMS module that enables warrant administrators to actively log and track warrants within the Mark43 RMS. For an additional fee, the customer can select to include an integration with the courts system through a message switch provider (see SKU PAR 4: Message Switch Integration). Functionality of this module requires RMS 1: RMS Core.

RMS 4 PRODUCT SPECIFICATIONS/FEATURES:

- Track warrants within your jurisdiction
- Track internal records workflows
- Track and update warrant service activities
- Automated warrant status updates
- File and multimedia attachments
- Search and sort warrants across a variety of criteria
- Active warrant alerts on person profiles
- Configurable role-based warrant permissions and abilities
- Exporting abstracts, notices (letters), and warrant activities
- Entry and cancellation of warrants in external databases (State-run databases or NCIC) with purchase of DEX 2: RMS Data Exchange and PAR 3 : Message Switch Integration)
- Seamless integration between Arrest/Booking modules, and the Warrants module
- Integrated and cross-referenced master entity profiles (Persons, Property, Organizations, and Vehicles)
- Automated warrant creation via integration, and capability to hand-enter warrant data
- Availability of Warrant data in Analytics BI Suite for robust reporting capabilities

RMS 5: RMS HANDHELD MOBILE COLLECTION

RMS module that enables warrant administrators to actively log and track warrants within the Mark43 RMS. Functionality of this module requires RMS 1: RMS Core.

RMS 5 PRODUCT SPECIFICATIONS/FEATURES:

- Touch ID and Face ID login
- SSO login support
- Capture and view photos
- Create notes using speech-to-text
- Scan driver's licenses (select State support)
- Set current location on map using phone GPS
- Search and view integrated master entity profiles (Persons, Property, Organizations, and Vehicles)
- Search and view RMS reports
- Archive capability
- Seamless sync of data between mobile and web RMS applications
- Create and pre-fill RMS report using mobile collection data

2. **Initial Term.** The Initial Term is the three (3) year period commencing on the Effective Date.
3. **Renewal Terms.** Any Renewal Terms shall be for a period of one (1) year.
4. **Fees:** For the Initial Term, the following Fees will apply:

Recurring Fees:

<i>Mark43 Product Subscription Recurring Fees</i>	<i>Qty (if applicable)</i>	<i>List Price</i>	<i>Price to Subscriber</i>
ANA 2: Analytics BI Suite Explorer	50 licenses	\$24,000.00	\$20,520.00
DLK 2: Data Lake - Entry	1	\$20,000.00	\$17,100.00

RMS 1: RMS Core	2447 sworn	\$2,936,400.00	\$792,828.00
RMS 2: RMS Case Management	2447 sworn	\$0	\$0
RMS 4: RMS Warrants	2447 sworn	\$0	\$0
RMS 5: Mobile Field Collection	2447 sworn	\$0	\$0
Subtotal - Mark43 Product Subscription		\$2,980,400.00	\$830,448.00
Mark43 Professional Services Recurring Fees			
	Qty (if applicable)	List Price	Price to Subscriber
Support & Maintenance Interfaces (Starting Year 2)	31	\$44,000.00	\$39,060.00
Subtotal - Mark43 Professional Services		\$44,000.00	\$39,060.00
Partner Products or Services Recurring Fees			
	Qty (if applicable)	List Price	Price to Subscriber
PAR 3: Third Party Middleware Connector (via ConnectCIC)	2,477	\$60,000.00	\$60,000.00
Subtotal - Partner Products or Services		\$60,000.00	\$60,000.00
Total Recurring Fees (Year 1)		\$3,040,400.00	\$890,448.00
Total Recurring Fees (Years 2-3, and 4-5 if renewed)		\$3,084,400.00	\$929,508.00

One-Time Fees:

<i>Mark43 Professional Services – One -Time Fees</i>	Qty (if applicable)	List Price	Price to Subscriber
DCM 1: RMS Full Enterprise		\$150,000.00	\$135,000.00
DEV 1: Analytics BI Dashboard Creation		\$5,000.00	\$0
INTERFACE: TriTech CAD		\$25,000.00	\$17,500.00
INTERFACE: GIS		\$25,000.00	\$15,750.00
INTERFACE: FileOnQ		\$50,000.00	\$0
INTERFACE: TxDot Crash Entry System		\$25,000.00	\$0
INTERFACE: ARIES		\$0	\$0
INTERFACE: Bexar County Court		\$25,000.00	\$15,750.00
INTERFACE: Public Notification System		\$25,000.00	\$0
INTERFACE: LexisNexis DORS		\$25,000.00	\$0
INTERFACE: JMS		n/a	\$0
INTERFACE: Global JXDM (Regional information sharing)		\$25,000.00	\$17,500.00
INTERFACE: Case Management		\$150,000.00	n/a

INTERFACE: DMV		\$25,000.00	\$15,750.00
INTERFACE: Courts		\$25,000.00	\$15,750.00
INTERFACE: Crime Analysis Entry System		\$25,000.00	\$15,750.00
INTERFACE: TriTech Inform Mobile Desktop/Mobile Light		\$25,000.00	\$15,750.00
INTERFACE: TX Dept. of Criminal Justice		\$25,000.00	\$0
INTERFACE: Tyler Incode Court		\$5,000.00	Optional*
INTERFACE: Veripic		\$17,500.00	Optional*
INTERFACE: Sex Offender DB		\$17,500.00	Optional*
INTERFACE: Coban In-car Video		\$5,000.00	Optional*
INTERFACE: SARIC – Data Dump		\$17,500.00	Optional*
INTERFACE: Parole		\$17,500.00	Optional*
INTERFACE: Brazos – Ecite		\$5,000.00	Optional*
INTERFACE: OSL – Officer Safety Link		\$17,500.00	\$15,750.00
INTERFACE: Gang – TX State Database		\$5,000.00	Optional*
INTERFACE: Probation		\$17,500.00	\$0
INTERFACE: Tow exchange		\$0	\$0
INTERFACE: Exchange Server		n/a	\$0
INTERFACE: Active Directory		n/a	\$0
INTERFACE: SAP HR		n/a	\$0
INTERFACE: Convicted Offender Registration		\$17,500.00	\$15,750.00
INTERFACE: NHTSA (Property)		\$17,500.00	\$15,750.00
INTERFACE: Axon Body Camera		\$25,000.00	\$0
INTERFACE: FAMS Alarm Management		\$17,500.00	\$15,750.00
INTERFACE: PIPS/BOSS/3M (ALPR)		\$17,500.00	Optional*
INTERFACE: Warrants		n/a	\$0
Subtotal - Professional Services		\$875,000.00	\$327,500.00
Partner			
	Qty (if applicable)	List Price	Price to Subscriber
PAR 3: Third Party Middleware Connector (via ConnectCIC)		\$22,200.00	\$22,200.00
Subtotal - Partner Product or Services		\$22,200.00	\$22,200.00
Total One-Time Fees		\$867,200.00	\$349,700.00

*All interfaces listed as optional may be elected by Subscriber to be delivered post-Go Live and will be charged to Subscriber at a price mutually agreed to by the parties and not to exceed the list price as set forth above.

Mark43 will notify Subscriber of any changes to the fees for any Renewal Term (other than the Renewal Term Option Period) at least forty-five (45) days prior to the start of the Renewal Term.

5. Payment Schedule. Subscriber will pay the Fees on the following schedule:

a. Initial Term: Fees will be paid on the following schedule:

Year	Details of Payments and Due Dates	Amount Due
1	Implementation Period Payment (totaling \$3,849,700.00), due according to the following schedule:	
	- Contract Initiation – 10%	\$346,473.00
	- Progress Milestones (5 sub-milestones) – 30%	\$1,039,419.00
	<i>Progress Milestone 1 (Kick-Off Meeting Complete – 20%)</i>	<i>\$207,883.80</i>
	<i>Progress Milestone 2 (Discovery Sessions - 20%)</i>	<i>\$207,883.80</i>
	<i>Progress Milestone 3 (Client Provisioning - 20%)</i>	<i>\$207,883.80</i>
	<i>Progress Milestone 4 (Testing Complete - 20%)</i>	<i>\$207,883.80</i>
	<i>Progress Milestone 5 (Training Complete - 20%)</i>	<i>\$207,883.80</i>
	- Go-Live Milestone – 20%	\$692,946.00
	- Final System Acceptance – 40%	\$1,385,892.00
	Retainage Payment (Paid upon satisfactory performance of pending interfaces)	\$384,970.00
2	Total Year 2 payment due at first anniversary of Effective Date.	\$277,120.00
3	Total Year 3 payment due at second anniversary of Effective Date.	\$277,120.00
4	Total Year 4 payment due at third anniversary of Effective Date, if renewed.	\$277,120.00
5	Total Year 5 payment due at fourth anniversary of Effective Date, if renewed.	\$277,120.00
	5 YEAR TOTAL	\$4,958,180.00

b. Renewal Term: Fees for any Renewal Term will be paid in full in advance on the first day of the Renewal Term.

6. Support Services. As part of the SaaS Services, subject to Section 2.4, Mark43 shall establish, sufficiently staff and maintain the organization and processes necessary to provide telephone and/or email based technical support, troubleshooting, error identification, isolation and remediation, and other assistance directly to Subscriber and its Authorized Users to support Subscriber's use, deployment and validation of the SaaS Services on a 24x7 basis, and after normal business hours and on holidays, as necessary to support Mark43's obligations under this Agreement. The contact information for Mark43's technical support organization is Support@mark43.com and Mark43 will notify Subscriber in writing of any changes no less than 5 days in advance. Mark43 shall provide Subscriber with online access to its knowledge database and any other resource containing information that will aid in problem and error resolution and correction, as well as any other technical resources made electronically available to any of Mark43's other customers. The Mark43 account manager or

primary point of contact for Subscriber with respect to this Agreement will be Matt Neal or such other individual as Mark43 appoints in his or her stead upon notice to Subscriber.

7. **Service Levels.** Mark43 shall provide the Applications in accordance with the following services levels.

a. **Service Levels for the Records Management System and Evidence Management Applications (hereinafter, "RMS").**

- i. **RMS Availability.** During any calendar month of a Regular Usage Period, the RMS shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the RMS ("RMS Scheduled Downtime"); provided, however, that Mark43 is not responsible for any downtime of the RMS caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein; provided, further, that Mark43 shall be responsible for any downtime of RMS caused by Integrated Third Party Software (as defined below) solely to the extent specified in Section 7(c) below ("Service Levels for Integrated Third Party Software"). Mark43 shall provide Subscriber with prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime (defined below) of the RMS, as well as continual periodic updates during the unscheduled downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the RMS shall be available.
- ii. **RMS Service Credits.** In the event that Mark43 fails to make the RMS available at least 99.9% of the time in any given month during the Regular Usage Period due to RMS Unavailability (as defined below), Mark43 will credit the Subscriber's account for the unavailable RMS as follows:

RMS Availability (Monthly)	Credit Percentage
Above 99.9%	0%
99.8 – 99.0%	10%
98.9 – 98.0%	20%
Below 97.9%	30%

"RMS Unavailability" is defined as the percentage of minutes per month in which the RMS is completely and generally unavailable for Subscriber's use (but not the use of any one Authorized User), provided that RMS Unavailability does not include any unavailability attributable to: (a) RMS Scheduled Downtime for maintenance (whether by Mark43, by a vendor, or by Subscriber); (b) acts or omissions of Subscriber or any Subscriber user of the RMS; (c) server downtime related to connectivity issues resulting from Third Party-managed VPN access to hosted server or Subscriber internal network problems; (d) defects or bugs in the Applications or Software caused by Subscriber, any Authorized User, or any Affiliate, employee, agent or independent contractor of Subscriber; or (e) any other cause(s) beyond Mark43's reasonable control, including but not limited to those caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), Third Party Components, overall internet congestion or a force majeure. Subscriber will be responsible for immediately notifying Mark43 of all Third Party-managed VPN access and internal or external (e.g. internet service provider) network problems that arise.

"Credit Percentage" means the applicable percentage of the portion of the Fees attributable to Services in the calendar month in which the RMS Unavailability occurs. For example, if Subscriber has paid Mark43 \$1,000 for one year of a Regular Usage Period, and the RMS Availability falls to 99.5% during any calendar month in that year, then Mark43 will owe Subscriber a 10% credit on that month's portion of the Fee, or: $\$1,000/12 = \83.33 per month, and $10\% \text{ of } \$83.33 = \8.33 . In this example, Mark43 would owe Subscriber \$8.33 in credit for the month in which RMS Availability fell to 99.5%.

In order to receive this credit, Subscriber must notify Mark43 in writing within fifteen (15) days following the end of the month the RMS Unavailability occurred. All claims are subject to review and verification by Mark43 prior to any credits being granted. Mark43 will acknowledge credit requests within fifteen (15) business days of receipt and will inform Subscriber whether such claim request is approved or denied. The issuance of RMS Service Credit by Mark43 hereunder is Subscriber's sole and exclusive remedy for any failure by Mark43 to satisfy the service levels set forth in this Section 7(a).

b. **Reserved.**

- c. Notwithstanding anything else to the contrary contained herein, Mark43 shall be responsible for any downtime of or related to the Applications or Integrated Third Party Software (as defined below) that is caused by Integrated Third Party Software solely to the extent specified in this Section 7(c). Credit Percentages Service Credits referenced elsewhere in this Agreement shall not apply to downtime caused by Integrated Third Party Software or the integrations or connections to Integrated Third Party Software.
- i. **Availability of Third Party Applications.** Schedule A identifies specific Third Party Application integrations (the "**Integrated Third Party Software**") to be performed by Mark43 during the Professional Services Period, and the Subscriber's and Mark43's respective rights regarding acceptance of those Services. During the Regular Usage Period, the Integrated Third Party Software shall be operational no less than 99.9% of the time on a 24x7 basis, excluding any scheduled maintenance of the Integrated Third Party Software (whether scheduled by Mark43 or by the third party provider, the "**Integration Scheduled Downtime**"); provided, however, that Mark43 shall not be responsible for downtime caused by upgrades or updates to Integrated Third Party Software of which Mark43 does not receive the requisite advance notice, and such downtime will not count against the service levels promised herein. Mark43 agrees that it shall schedule any Integration Scheduled Downtime on minimal traffic days whenever possible. The Parties further agree that Mark43 shall not schedule in excess of 90 minutes of Integration Scheduled Downtime in during any 30-day period. Mark43 shall provide Subscriber with immediate telephone notification to the point of contact set forth in this Agreement as soon as it becomes aware of any actual or potential unavailability of an Integration other than Integration Scheduled Downtime ("**Integration Unscheduled Downtime**"), as well as continual periodic updates during the Integration Unscheduled Downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the Integration shall be available.
- ii. **Responsibilities for Planned Updates.** Subscriber shall provide Mark43 with prompt notice, and in no case fewer than forty-five (45) days' advance notice, of any update by the Third Party provider of Integrated Third Party Software. Mark43 shall undertake commercially reasonable efforts to patch, repair or update the Software in order to integrate it with the updated Integrated Third Party Software.
- iii. **Responsibilities for Planned Upgrades.** Subscriber shall provide Mark43 with prompt notice, and in no case fewer than ninety (90) days' advance notice, of any planned upgrade by the Third Party provider of Integrated Third Party Software. Mark43 shall evaluate the time and resources required to patch, repair or update the Software in order to integrate it with the upgraded Integrated Third Party Software. The Parties shall engage in good faith negotiations to agree on the terms (including, without limitation, schedule and price) on which Mark43 would develop a patch, repair, update or Upgrade to integrate the Software with the Integrated Third Party Software.

SCHEDULE B

Transition Assistance

Upon termination of the Agreement for any reason, and subject to all Fees due being paid in full, Mark43 will create searchable PDFs of each record (each, a "**Record**") and provide them to the Subscriber for download. Subscriber may request, and Mark43 will consider, other formats in which to create the Records, but the final format of all Records will be determined in Mark43's sole discretion. Records can be uploaded to Subscriber's new records management system by the Subscriber or its new vendor.

1. Preparation

- a. The Subscriber will provide the desired cutoff date of the SaaS Services (the "**Cutoff Date**"), at which time all existing user accounts will be terminated.
- b. Mark43 will provide one (1) account for the Subscriber to access a web-based storage platform to retrieve Subscriber documents and Records (the "**Transition Account**"). The Transition Account will be available to Subscriber for thirty (30) days prior to the Cutoff Date and for up to 2 years following the Cutoff Date.

2. Content

- a. Each Report in Mark43 will be recreated as a searchable PDF (or other mutually agreed to format as described above) using the standard Mark43 format then in use.
- b. All archive files will be accessible to securely download via the internet on the Cutoff Date.

3. Support

- a. Mark43 will maintain Subscriber data in Mark43 for up to 2 years following the Cutoff Date. Subscriber may request that Mark43 maintain Subscriber data for additional years, subject to a fee of \$25,000 per year, and agreement by the parties on terms governing such arrangement.
- b. Mark43 will maintain Subscriber PDF archives for up to 2 years following the Cutoff Date.
- c. Mark43 will resolve any issues it deems to be the result of errors in the Mark43 platform or export process for a period of six (6) months after the Cutoff Date.
- d. No less than 1 year after the Cutoff Date, Mark43 will delete Subscriber Data from all Mark43 online systems (e.g. primary database, replica databases, search databases, application caches, etc.) other than database backups, audit logs and server system logs. Additional years are available at an additional cost.
- e. Within 6 months from the date of deletion of Subscriber Data from all Mark43 online systems, all Subscriber Data will be erased from database backups.
- f. Notwithstanding the foregoing, Mark43 reserves the right to retain Subscriber Data on audit logs and server system logs and in support tickets, support requests and direct communications with Mark43.

Transition Assistance as outlined in this Schedule B is included in the Fees charged to Subscriber for the Services. Fees are due and payable up to the Cutoff Date. In the event that any Fees have not been paid as required in this Agreement, Mark43 may retain all Records and decline to provide the support outlined in Section 3 of Schedule B above until such Fees are paid in full.

SCHEDULE C

Technical Requirements

This Schedule lists the minimum technical requirements required for Mark43's RMS, CAD, Evidence Management and Data Exchange applications. This also describes the requirements for Mark43 interface servers. Third Party Providers and subcontractors may have additional requirements that are not listed here.

1. MARK43 RMS

1.1 RMS Workstation Requirements

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x quad-core processor or greater
Architecture	x64 / x86	x64
Memory	4 GB	6 GB+
Network Card	1x 2 Mbps+ NIC	1x 10 Mbps+ NIC
Display(s)	1x 1024x768	1x 1920x1080
Hard Drive	1 GB available space	5 GB available space
Graphics Card	N/A	N/A
Bandwidth	2 Mbps	5 Mbps+

1.2 RMS Workstation Site Internet Requirements

Mark43 RMS operates as a single-page application where most of the heavy download load is needed only on initial page load for each user. For RMS, Mark43 recommends an overall internet bandwidth connection of 1+ Mbps per concurrent user using that connection. Actual performance and usage may vary depending on user usage of other internet-connected applications and your ISP.

1.3 RMS Mobile Data Terminal Requirements

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x dual-core processor or greater
Architecture	x64 / x86	x64
Memory	2 GB	4 GB+
Network Card	2 Mbps (4G LTE)	5 Mbps+ (4G LTE)
Display(s)	1x 1024x768	1x 1024x768+
Hard Drive	1 GB available space	5 GB available space
Graphics Card	N/A	N/A
Bandwidth	2 Mbps (4G LTE)	5 Mbps+ (4G LTE)

1.4 RMS Browser Requirements

Mark43 RMS is web-based and requires a modern web browser to access the system. Mark43 RMS supports the following browser versions that receive technical support and security updates from the browser vendor.

- Google Chrome (latest)
- Microsoft Edge (latest)
- Mozilla Firefox (latest)

As of 6/1/19, Mark43 RMS also supports Microsoft Internet Explorer 11, but IE11 support will be phased out in 2020.

1.5 RMS Smartphone Mobile Application Requirements

The Mark43 RMS Smartphone Mobile Application is available on iOS.

Item (iOS)	Supported	Recommended
Operating System	Apple iOS 10+, 11, 12	Apple iOS 12
Device	iPhone 6, 6 Plus, 6S, 6S Plus iPhone SE iPhone 7, 7 Plus iPhone 8, 8 Plus iPhone X, XS, XS Max, XR iPad Air 2, 3rd gen iPad Mini 3, 4, 5th gen iPad Pro 1st gen, 2nd gen, 3rd gen iPad 5th gen, 6th gen	iPhone XS iPad gen 6

1.6 Evidence Smartphone Mobile Application Requirements

The Mark43 Evidence Smartphone Mobile Application is available on iOS and Android.

Item (iOS)	Supported	Recommended
Operating System	Apple iOS 10, 11, 12	Apple iOS 12
Device	iPhone 6, 6 Plus, 6S, 6S Plus iPhone SE iPhone 7, 7 Plus iPhone 8, 8 Plus iPhone X, XS, XS Max, XR iPad Air 2, 3rd gen iPad Mini 3, 4, 5th gen iPad Pro 1st gen, 2nd gen, 3rd gen iPad 5th gen, 6th gen	iPhone XS iPad gen 6

Item (Android)	Supported	Recommended
Operating System	Android 5+	Android 9
Device	Samsung Galaxy S7+	Samsung Galaxy S10

1.7 Evidence Barcode Printer Requirements

The Mark43 RMS Property and Evidence module requires a barcode printer to optimize the evidence management process. Mark43 integrates seamlessly with Zebra barcode printing hardware and requires the following printer:

- ZD420 model number ZD42043-C01E00EZ
- 2000T label
- 5095 Premium Resin ribbon (05095CT11007)
 - o Ribbon roll-only (05095GS11007)

Deviating from this hardware configuration will lead to smeared, stretched or otherwise incorrectly printed barcode labels. For departments with multiple printers, Mark43 recommends purchasing the same model for all locations.

1.8 Evidence Printer Server Requirements

In order for Mark43 RMS to communicate with the barcode printers, an intermediate server to route printing requests is required. This machine can be the same machine as the Interface Servers specified below or standalone in which case it will need the following specifications:

Item	Minimum	Recommended
Processor	2x 2.0+ GHz processors	2x 2.0+ GHz processors
Memory	2 GB	4 GB+
Hard Drive	32 GB HDD storage	64 GB HDD storage

2. RESERVED.

3. MARK43 ANALYTICS

3.1 Data Lake Requirements

Mark43 Data Lake is a Microsoft SQL Server Database and requires a database client that receives technical support and security updates from the vendor. Mark43 recommends using Microsoft SQL Server Management Studio.

3.2 Business Intelligence Suite Requirements

Mark43 Business Intelligence Suite runs embedded within Mark43 RMS and therefore has the same browser requirements as Mark43 RMS.

4. MARK43 DATA EXCHANGE

The Mark43 Data exchange functionality is enabled through either the RMS or CAD applications. Additional interface servers may be required to support Mark43 Data Exchange data flows, depending on the department's size and complexity.

5. MARK43 INTERFACE SERVERS

5.1 Server Requirements

Interface servers are on-premise servers that Mark43 uses to run integrations developed by Mark43. These servers allow Mark43 integrations to access on-premise Subscriber systems. Mark43 supports these servers from the VM up and ensures that interfaces running on these servers are maintained and monitored. The table below outlines Mark43's minimum required and recommended server specs for an interface server setup.

Item	Minimum	Recommended
Number of servers	1	2+
Operating System	Ubuntu 16.04	Ubuntu 16.04
Processor	1x quad-core processor	2x quad-core processor
Architecture	x64	x64
Memory	8 GB	16 GB+
Network Card	1x 100 Mbps NIC	2x 1 Gbps+ NICs
Display(s)	N/A	N/A
Hard Drive	250 GB available space	500 GB available space
Graphics Card	N/A	N/A
Bandwidth	2 Mbps (4G LTE)	5 Mbps+ (4G LTE)

5.2 Support

The preferred model is that Subscriber provision these servers and maintain them from hardware/vm up through the operating system. Mark43 will maintain the application software installed on this server, which consists of:

- Docker, which runs all the application software in an easily manageable way
- Rancher, which orchestrates and applies updates to the scripting logic that the Docker containers run

Subscriber may choose to install other software (e.g. monitoring software) on this server as long as it does not interfere with the operation of the Mark43 provided applications.

5.3 Releases

The Docker containers running on the interface server update themselves as part of the normal Mark43 release cycle. This is to ensure compatibility with any API changes made to the internal Mark43 API.

5.4 Maintenance

If Subscriber needs to apply patches to the interface server this can be done safely by rotating servers in & out. Mark43 does ask to be notified when this happens, to ensure the Docker service running the integration scripts restarts successfully when the server is restarted.

5.5 Networking/Firewall Setup

Inbound:

- SSH over client VPN
- HTTPS over client VPN
- All other IPs/ports inbound from public internet should be closed

Outbound:

- TCP 443,5000 to 0.0.0.0/0

VPN:

- Mark43 will SSH to this server over the Subscriber VPN to install Docker and do any maintenance tasks that can't be completed by the automatic script updates

User Accounts:

- Mark43 will need sudo access on this server to do the Docker installation.

Assigning Static IP Addresses:

- Subscriber will need to take the following steps:
 1. Log in to the server with the username and password.
 2. Enter the following command `sudo nano /etc/network/interfaces`
 3. Delete the line `iface eno1 inet dhcp`
 4. Add the following lines. Replace the text in <> with your network appropriate information. We recommend using 8.8.8.8 and 8.8.4.4 for your DNS server:

```
iface eno1 inet static
address <ip address>
netmask <subnet mask>
gateway <default gateway>
dns-search <DNS search domain>
dns-nameservers <dns server> <optional secondary dns server>
```
 5. Type `control+x` to exit
 6. Press `y` to save
 7. Press `enter` to confirm the name `/etc/network/interfaces`.
 8. Type `sudo reboot` to restart the server.

SCHEDULE D

Additional Terms

A. Vendors:

Google: Users are bound by the Google Maps/Google Earth Additional Terms of Service (including the Google Privacy Policy), available by following these links:

Google Maps Terms: https://maps.google.com/help/terms_maps.html

Google Privacy Policy: <https://policies.google.com/privacy?hl=en&gl=us>

Acceptable Use: https://enterprise.google.com/maps/terms/universal_aup.html

Amazon:

Universal Service Terms: <https://aws.amazon.com/service-terms/>

Acceptable Use: <https://aws.amazon.com/aup/>

B. Subcontractors:

Subscriber consents to Mark43's use of the following subcontractors: CommSys, Inc. Additional Terms shall be provided to Subscriber in connection therewith.

SCHEDULE E

Mark43 Data Processing Addendum

1. **Definitions.** Terms not otherwise defined in this Data Processing Addendum (“DPA”) have the meaning set out in the Software License and Services Terms (“Agreement”).
 - a. “**Subprocessor**” means a Mark43 Affiliate or other third party engaged by Mark43 for the purpose of hosting, storing or otherwise processing Subscriber Data as authorized by the Agreement or otherwise in writing by Subscriber.
2. **Subscriber Data.** The obligations in this Exhibit apply to Subscriber Data in the custody or control of Mark43 and its Subprocessors. They do not apply to Subscriber Data in the custody or control of any other party, including Subscriber Data under Subscriber’s custody or control outside of the Services or Subscriber Data maintained by a Third Party Provider or transmitted or accessed on or through a Third Party Application.
3. **Disclosure.** Mark43 will not disclose Subscriber Data to any third party except: (i) to Authorized Users; (ii) as permitted under the Agreement; (iii) to its Subprocessors, provided that each Subprocessor agrees to protect Subscriber Data in a manner substantially in accordance with this DPA; or as provided by this DPA with respect to any Disclosure Request. Notwithstanding the foregoing or anything in this DPA to the contrary, Subscriber acknowledges and agrees that (a) Mark43 utilizes major providers of cloud-based services for processing certain Subscriber Data through the Services (each, a “**Cloud Provider**”) (including, as of the Effective Date of the Agreement, Amazon Web Services for hosting and Google for mapping and geolocation services), (b) each Cloud Provider has its own data protection practices that are applicable to its delivery of services to its customers, and (c) Cloud Providers will not agree to separate data protection practices on a customer-by-customer basis; therefore, Cloud Providers will not be required to comply with the obligations in this DPA to the extent that they are inconsistent with each Cloud Provider’s own data protection practices, but Mark43 will use reasonable efforts to assess that each Cloud Provider complies with its own data protection practices, which will include periodic examination of annual SOC 2 reports made available by Cloud Provider.
4. **Information Security Program.** Mark43 will implement and maintain a written information security program that contains reasonable administrative, technical and physical safeguards intended to protect Subscriber Data from unauthorized access, disclosure, use, modification, loss or destruction.
5. **Access.** Mark43 will maintain appropriate access controls to Subscriber Data, including limiting access to Subscriber Data only to personnel who require such access in order for Mark43 to provide Services to Subscriber or to otherwise exercise Mark43’s rights or perform Mark43’s obligations under the Agreement. Mark43 will require its personnel to protect Subscriber Data in accordance with the requirements of this DPA and will provide its personnel with appropriate information security training.
6. **Information Security.**
 - a. Mark43 maintains its information security program and applicable safeguards at all Mark43 sites at which an information system that stores or otherwise processes Subscriber Data is located.
 - b. Mark43 maintains network security using commercially available equipment and industry standard techniques, including firewalls, router access control lists, intrusion detection and/or prevention systems, penetration testing, vulnerability scanning, and patch management tools.
 - c. Mark43 will encrypt, using industry-standard encryption tools, all Subscriber Data that Mark43: (i) transmits or sends wirelessly or across public networks; (ii) stores on laptops or removable storage media; and (iii) stores on portable devices, where technically feasible. Mark43 will safeguard the confidentiality and availability of all encryption keys associated with encrypted Subscriber Data.
 - d. Mark43 installs and maintains endpoint security measures such as anti-virus and malware protection software intended to protect Subscriber Data from malicious code.
 - e. Mark43 undertakes appropriate logging and monitoring to enable recording of information security-related actions and identification of anomalous events.
 - f. Mark43 develops software used to deliver the Services in accordance with secure software development principles.
7. **Security Incident Management.** Unless otherwise prohibited by law, Mark43 will notify Subscriber promptly (and in any event within 72 hours) in the event Mark43 reasonably believes that there has been any unauthorized access, acquisition, disclosure, use, modification, loss or destruction of Subscriber Data

(“**Security Incident**”). Mark43 will promptly investigate the Security Incident, will take necessary steps to eliminate or contain the exposure of Subscriber Data, and will keep Subscriber informed of the status of the Security Incident. Mark43 will provide reasonable assistance and cooperation requested by Subscriber or Subscriber’s designated representatives to correct, remediate, or investigate the Security Incident or to mitigate potential damage resulting from it, including any notification that Subscriber may determine appropriate to send to affected individuals, regulators or third parties.

8. **Business Continuity.** Mark43 implements and maintains appropriate disaster avoidance, disaster recovery and business continuity plans to safeguard the Subscriber Data and Subscriber’s other Confidential Information, Mark43’s processing capability, and the availability of the SaaS Services, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder. Mark43 reviews and updates such plans regularly. Back-up copies of critical business information and software are created regularly and tested to verify their integrity.
9. **Audits.** Upon Subscriber’s request, Mark43 will make available to Subscriber up to once per year a copy of a third-party assessment, such as a SOC 2 report or comparable report (“**Third-Party Report**”). Subscriber may provide to Mark43 a security assessment questionnaire related to the Services, which Mark43 will accurately and promptly complete. Such a questionnaire must be reasonable in scope and may include questions seeking verification of compliance with the terms and conditions of this DPA. All Third-Party Reports or information accessed by or otherwise disclosed to Subscriber in connection with any such review will be considered Confidential Information of Mark43.
10. **Return/Disposal.** Upon termination or expiration of the Agreement, Mark43 will maintain Subscriber Data and will take reasonable steps to return or destroy Subscriber Data according to the timeframes set out in Schedule B of the Agreement. If Mark43 has any legal obligation to retain Subscriber Data beyond the periods otherwise specified by Schedule B, Mark43 will notify Subscriber in writing of that obligation, to the extent permitted by applicable law, and will return or destroy the Subscriber Data in accordance with this DPA as soon as possible after that legally required retention period has ended. If Mark43 disposes of any paper, electronic or other record containing Subscriber Data, Mark43 will take all reasonable steps to do so by: (a) shredding; (b) permanently erasing and deleting; (c) degaussing; or (d) otherwise modifying Subscriber Data in such records to make it unreadable, unreconstructable and indecipherable.
11. **Location of Subscriber Data.** Subscriber Data stored or transmitted through the SaaS Services in Subscriber’s user accounts shall be hosted by a Cloud Provider in the United States. Mark43 currently uses AWS Govcloud region as Cloud Provider to host Subscriber Data. Information about AWS’ commitment to support customers’ CJIS compliance requirements is available here: <https://aws.amazon.com/compliance/cjis/>.